

TANZANIA / JUDGMENT

JUMANNE FRANK MAZIKU

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18 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB - REGISTRY OF SHINYANGA AT SHINYANGA CIVIL APPEAL NO. 10 OF 2023 JUMANNE FRANK MAZIKU 1st APPELLANT SOPHIA MAZIKU MAYUNGA 2ND APPELLANT I VERSUS LUCIA NYAMIZI MIHAMBO 2nd RESPONDENT [Appeal from the decision of the District Court of Shinyanga at Shinyanga] CHon. C.S. LANGAU SRM. I Dated the 18th day of November, 2022 in Civil Appeal No. 59 of 2022 JUDGMENT I 2fJh February & gh April, 2024. S.M. KULITA, I. This appeal arises from the decision of the District Court of Shinyanga at Shinyanga in the Civil Appeal No. 59 of 2022. The story behind this appeal in a nut shell is that, upon been blessed through the clan meeting, conducted in the absence of the Respondent herein, the appellants applied for 1 administration of estates of the deceased, late Maziku Mayunga Manyamaat Kizumbi Primary Court in Shinyanga District via Probate and Administration Cause No. 59 of 2021. Having noticed that, the Respondent herein lodged the objection before that said court alleging that she is the deceased's wife but she and her children were not involved in the clan meeting that led to the proposal of the Appellants herein to be appointed the administrators for the deceased's estates. However, at the end, the Appellants, Jumanne Frank Maziku and Sophia Maziku Mayunga who are the Grandson and Daughter of the deceased respectively, were appointed to be administrators. That was 30/12/2021. The reason behind according to the Magistrate was that, appointment of the Administrator is a step towards division of the deceased's estates to heirs and that, it is not necessarily that the Administrator be a person among the heirs. Aggrieved with that decision the Respondent therein, Lucia Nyamizi Mihambo, lodged an appeal at the District Court of Shinyanga. On 13/07/2022 the presiding Magistrate, Hon. Swallo, RM. through the Probate Appeal NO.5 of 2022 revoked the said appointment and returned the case file to the trial court for appointment of the Officer of the Court who is a neutral person to both parties, to be the Administrator for the deceased's estate. Meaning thereby, he/she should neither be the Appellant nor the Respondent herein. The parties were given an option to propose the Administrator of that said nature but nobody was accepting the choice of another. Regarding the parties' failure to reach into consensus agreement on the person to be appointed, on the 18/08/2022 the Primary Court appointed Abajaja Court Broker to be the administrator. That decision aggrieved the Respondent herein, hence appealed at the District Court through Civil Appeal No. 59 of 2022, this time before Hon. Langau, RM who revoked the appointment of Abajaja Court Broker. Among the reasons that she had relied on was that, the Court Broker is not an officer of the court. She thus replaced the name of Lucia Nyamizi Mihambo, the Respondent herein instead. That was

18/11/2022. The Appellants herein were aggrieved with the said decision of Shinyanga District Court. They thus appealed to this court relying on the following four grounds;

1. That, the District Court determined the appeal relying on the facts which were not raised in the original case. 3
2. That, the District Court Magistrate erred in law for failure to honor the prior decision of her fellow Magistrate that the administrator should be a neutral person.
3. That, the Respondent herein has no capacity to administer the deceased's estate and that she has no good relationship with the other legal heirs.
4. That, the appointee (Respondent) has already started to manipulate the deceased's estate without involvement of the other heirs. The appeal was argued by way of oral submissions. While the Appellants are unrepresented, the Respondent enjoys the legal service of Mr. Audax Constantine, Advocate. In his oral submission in support of appeal, the 1st Appellant, Mr. Jumanne Frank Maziku, started by praying for his grounds of appeal to be adopted as part of his submission. He added by making collective submissions for all grounds that, in her judgment in the Civil Appeal No. 59 of 2022 Hon. Langau RM. was wrong for not adopting what was instructed by her Predecessor, Hon. Swallo, RM. that the person to be appointed as the administrator should be neutral, hence Abajaja Court Broker was the right appointee by the Primary Court. He averred that the District Court was thus wrong to revoke 4 her appointment and replace the Respondent herein who is not a neutral person. The 1st Appellant further submitted that the relationship between the Respondent and other heirs is not good. He said that, that can lead to difficulty even in the distribution of the deceased's estates to heirs. He concluded by praying for the appeal to be allowed. The 2nd Appellant, Ms. Sophia Maziku Mayunga stated that the submissions made by the 1st Appellant are sufficient. She prays for the court to consider them and decide the appeal for the Appellants. In the reply thereto, Advocate for the Respondent, Mr. Audax Constantine, submitted in respect of the 1st ground of appeal that, the 1st appellate court Magistrate relied on the facts that had been raised in the primary court's case. He said that the analysis made in the impugned judgment of the District Court based on the legal and factual issues that had been raised during trial. As for the 2nd ground of appeal, that the District Court Magistrate erred in law for failure to honor the decision of the predecessor Magistrate, Hon. Swallo RM. in the Probate Appeal No. ~ of 2022 that the administrator should 5 be a neutral person, Mr. Audax Constantine, Advocate, submitted that, in the subsequent appeal, Civil Appeal No. 59 of 2022 dated 18/11/2022, Hon. Langau RM. was determining the Primary Court's decision in the Probate Cause No. 59 of 2021 Kizumbi Primary Court. She was not dealing with the Probate Appeal NO.5 of 2022 presided by Hon. Swallo, RM. On that ground of appeal, the Respondent's Counsel added that, Hon. Swallo, RM. ordered for the appointment of an Officer of the Court to be the Administrator, thus, the Primary Court appointed Abajaja Court Broker. However, Mr. Audax challenged that the Court Broker is not Officer of the Court in terms of Paragraph 2(b) of the 5th Schedule to the Magistrate Courts Act. He said that, it being a company and not a natural person cannot be the administrator.

As for the issue of impartiality, Mr. Audax stated that, it is premature for the same to be determine at this stage. He said that the appellants have to wait until the time when the administrator starts to perform her duties, including distribution of the deceased's estates to the legal heirs. The counsel further stated that the deceased and the Respondent had a Christian marriage. He said that the respondent is the only person who was taking care of the deceased while he was sick until his demise. The counsel admits that the Deceased ever had other wives while living at Nzega a long time ago. Most of them had passed away. He added that the Appellants herein are just grandson and granddaughter of the deceased. Replying the 3rd ground of appeal, Mr. Audax submitted that the Appellant's allegation that the Respondent is incapable to administer the estates is a fact which needs evidential proof of which the Appellants have failed to establish and it is not there in the original record. The counsel submitted the same for the issue of relationship between the Respondent and the other legal heirs, that there is no proof of bad relationship between them. He however added that the Appellants herein and the persons they purport to represent are not close relative to the deceased. As for the 4th ground that the appointee (Respondent) has already started to manipulate the deceased's estate without involvement of the other heirs, Mr. Audax disputed the said allegation. He stated that, had that been an issue the Appellants had to table it before the trial Primary Court, Kizumbi. Mr. Audax Constantine, Advocate, concluded by praying for the appeal to be dismissed. 7 In rejoinder the 1st Appellant reiterated what he had submitted in his submission in chief, save for the fact that by the time the Respondent was married, the deceased already had 3 (three) other wives and that he used to live with them at Shinyanga. It thus can't be fair for the Respondent to inherit all of the deceased's properties. The 2nd Appellant had nothing to rejoin. From the above submissions and upon going through the records, I find the issue to be determined is whether the appointment of Lucia Nyamizi Mhambo, the Respondent herein, as the Administrator of the deceased's estates was proper. In my analysis I am going to deal with all grounds of appeal collectively. In challenging the petition for administration of estates filed at the Primary Court, the Respondent herein, Lucia Nyamizi Mhambo, alleged that the Appellants and others who purported to have attended the clan meeting, have nothing to do but to rob the properties that she and her late husband had acquired during their life time as husband and wife. She said that the Appellants and those other persons whom they allege to represent, pretend themselves being legal heirs for the deceased's properties through their late mothers' or grandmothers' contributions in the acquisition of the said 8 properties, the fact which she asserts to be false. The said Respondent alleged that the existing properties were acquired by her in corporation with her late husband who passed away in her hands on 18/07/2021. As for the other wives, the records transpire that they had passed away in 1980s, which is a long time ago. It means that if she has not participated in the acquisition of the existing properties, she played role in maintaining them from that said period of 1980s to date. In that situation, the appellants and other relatives of the deceased whom they purport to represent have nothing to claim from those said properties. Another thing that I have noticed on this matter, of which I find convenient to resolve is that, the Appellants alleged that they step into the shoes of their mothers and grandmothers to claim for their shares

from the deceased's estates. They said that they represent the other children and grandchildren of the deceased who were not born by the Respondent herein to claim for their shares. My comment on this is that the parties herein have been trying to establish the issue of how the deceased's estates should be distributed, but that program is prematurely raised, as the administrator for the estates is yet to be approved. Therefore, instead of analyzing on how the estates should be distributed, this court is going to deal with verifying on a fit person 9 to administer the estate, who shall then be required to perform his/her duties accordingly. As narrated herein before that, in dealing with this case, the lower courts came up with different views as to who should be the administrator. While in the Probate and Administration Cause No. 59 of 2021 Kizumbi Primary Court the Appellants herein were appointed the Administrator, in the 1st appeal case, that is, Probate Appeal No. 5 of 2022 Shinyanga District Court which was before Hon. Swallo RM, it was revoked and ordered that the Primary Court should appoint another person, apart from the litigants herein, to be the administrator. That, he should be a person who is neutral to the parties. But it was difficult to get such a person, as a result the Primary Court appointed the Court Broker, namely Abajaja to perform the said task. However, the said decision was also challenged by the Respondent, hence another appeal to the District Court was lodged. In this later appeal at the District Court (Civil Appeal No. 59 of 2022) which was before Hon. Langau RM, the Respondent herein was appointed the administrator. Without taking trouble to analyze on the legality of the said two decisions of the District Court, through the revisionary powers that have been vested to this court under section 44(1)(b) of the Magistrates Courts' Act, I 10 hereby invoke it by making the orders of which I find convenient to resolve this matter in conclusive; The records transpire that the persons who seek for the administration of the deceased's estates are Jumanne Frank Maziku and Sophia Maziku Mayunga (Appellants) on one hand, and Lucia Nyamizi Mihambo (Respondent) on the other hand. As narrated herein before that, there was no consensus agreement between the two sides as to who should be the administrator. Irrespective of the said collision, the administrator should be appointed. The issue of how the estates will be distributed is the task that should follow thereafter. Basically any person, even if he/she is not among the beneficiaries, can be appointed the administrator. However, it is preferred the said person be a close relative(s) of the deceased, unless they are all found unfit to hold the said position. See SEKUNDA MBWAMBO V. ROSE MBWAMBO [2004] TLR 439 at page 444 - 445. The issue now is "who should be appointed the administrator for this matter?" In answering the said question, I am going to regard the fact that, it is vivid in the record and undisputed that the minutes for the clan meeting 11 which proposed the Appellants herein to be appointed as administrators, does not include the names of the Respondent herein. Actually she had not participated the said meeting from which the said minutes was extracted. The Respondent alleged that she and her children were not involved. My first comment on the said minutes is that, it is dated 19/07/2022 which means that the same was conducted after the Primary Court had already determined the 1st decision on 30/12/2021 before the case had been remitted back by the District Court (Hon. Swallo RM) for appointment of the Administrator who is neutral. As the said order of retrial was responded and the same reached into the conclusion on 18/08/2022, it means the said

meeting was conducted immediately before the said 2nd decision of Primary Court had been made out. Though the law does not compel the applicant for the administration of estates to have the minutes for a clan meeting and submit it to court, this scenario by itself creates a doubt as to why the said clan meeting came to be conducted subsequently, while the matter was on going in court. Further, even if we take the said minutes valid though it is not, still I find it that, whether they called her or not, to attend the said meeting, failure of the participants in that said meeting to recognize the Respondent as the 12 widow of the deceased, implies that the Appellants and all other participants for that meeting are bias to the respondent, hence cannot be good persons to administer the deceased's estates. The said minutes for the clan meeting do not even show that the deceased left a widow (Respondent) and children with her. It means that, this is what they had intended to make the court to believe, while in real sense it is not the reality. Also, upon regarding the fact that Respondent was the deceased's spouse, whom they were living under the same roof, obvious she is more conversant with the ownership status of the deceased's properties than other persons including the Appellants herein. For those reasons, I find it proper for the District Court through the impugned judgment, Civil Appeal No. 59 of 2022, to appoint the Respondent herein to administer the deceased's estate. Apart from invoking the revisionary powers that I have under the provision of section 44(1)(b) of the Magistrates Courts' Act, as narrated herein before, still the District Court, as the 1st appellate court, has powers to step into the shoes of the Primary Court and analyze the evidence presented before it as a trial court, and accordingly decide upon. See *FUTURE 13 CENTURY LTD V. TANESCO*, Civil Appeal No.5 of 2009, CAT at DSM. Therefore, it was not fatal for the District Court of Shinyanga, through Hon. Langau RM, to appoint the Respondent herein, Lucia Nyamizi Mhambo as the administrator instead of Abajaja Court Broker who was lastly appointed by the Primary Court. Upon being appointed the Administrator, the Respondent herein, Lucia Nyamizi Mhambo, will have to perform her duties as per the law, which includes collecting the deceased's properties and filing Inventory before the trial court, then distribute the properties to legal heirs before filing an Account before that said court. This is a requirement of the law as per Regulation 10(1) of the Primary Court (Administration of Estates) Rules, G.N. No. 49 of 1971 which provides that the Administrator of Estates should file Inventory and distribute the deceased's properties to legal heirs, then file an Account at the trial court showing how the properties have been distributed. It is the basic duty of the administrator to recollect the properties and distribute them to heirs. This was also held in *MARIAM JUMA V. TABEA ROBERT MAKANGE*, Civil Appeal No. 38 of 2009, CAT at DSM in which the Court of Appeal held; 14 "The High Court did not have any mandate to determine who should be a beneficiary from the deceased's estate. This rote was to be played by the Administrator of the deceased's estate appointed by the court)" [emphasis is mine] See also the reported case of *IBRA, HIM KUSAGAV. EMMANUEL MWITA*

[1988] TLR 26 in which the Court of Appeal observed that; "4 Primary Court ought not to distribute the estate of the deceased, that is the duty of the administrator appointed by the court" [emphasis is mine] If it happens that somebody, who th~nks himself/herself the

legal heir for the deceased's estates, but he/she is totally excluded or not satisfied with the distribution of the estate done by the Administrator, he/she will have to file a civil suit against her. As narrated herein before that, the fact that the Administrator of estate was not yet appointed, the argument on how and to which persons, the deceased's estates should be distributed, is the issue which was prematurely raised. However, the fact that the Respondent herein, Lucia Nyamizi 15 Miambo has been appointed the Administrator, she should immediately play that role. In upshot, I find this appeal with no merit hence dismissed. This being a family matter, I grant no order as to costs. *fe- S.M. KULITA JUDGE 05/04/2024 DATED at SHINYANGA this 5th day of April, 2024. 16

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Prepared on 14 October 2026 · Esheria